

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

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| MARINERS HAVEN, |) | |
| |) | |
| Appellant, |) | DOCKET NO.: PT-1996-5 |
| |) | |
| -vs- |) | |
| |) | |
| THE DEPARTMENT OF REVENUE |) | <u>NUNC PRO TUNC</u> |
| OF THE STATE OF MONTANA, |) | FINDINGS OF FACT, |
| |) | CONCLUSIONS OF LAW, |
| |) | ORDER AND OPPORTUNITY |
| Respondent. |) | <u>FOR JUDICIAL REVIEW</u> |

The above-entitled appeal was heard on the 10th day of June, 1997, in the City of Libby, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law. The taxpayer, represented by counsel William Douglas, Mariners Haven's managing partner Alfred Luciano, forestry consultant Russell Hudson, and Mariners Haven's manager Richard Runyon, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Staff Forester Randy Pearson, Regional Supervisor William Haines, and Lincoln County Planning Director Ken Peterson, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits, and all things and matters presented to it by all parties, finds and concludes as follows:

STATEMENT OF THE ISSUE

The issue before this Board is the classification of the subject property. The taxpayer, MARINERS HAVEN, contends the subject property is forest land or class 10 property, as defined in 15-6-143 and 15-44-102, MCA. The DOR has determined the subject property is class four property, as defined in 15-6-145, MCA.

FINDINGS OF FACT

1. Due, proper, and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. Mariners Haven, a partnership, is the owner of the property which is the subject of this appeal and which is described as follows:

Mariners Haven Subdivision Phase II, W1/2, SE1/4
& SE1/4, SW1/4, Section 11, Township 36 North,
Range 28 West, consisting of 28.564 acres.

Mariners Haven Subdivision Phase III, S1/2,
Section 11 & NE1/4, NW1/4, Section 14, Township 36
North, Range 28 West, consisting of 39.961 acres.

3. For the 1996 tax year, the DOR appraised the subject land as class four property, a platted subdivision consisting of residential lots, roads, and common areas.

4. The market value of the subject property is not an issue before the Board; however, the market value of the subject property is dependent upon the property class determination and

would change if the classification were to change.

5. The taxpayer appealed to the Lincoln County Tax Appeal Board on July 2, 1996, requesting forest land classification, stating:

While property was subdivided, it cannot be sold until all improvements are installed. Property not improved is still used as in previous years, timber land. There are no changes in use.

6. The county board, in its decision dated July 31, 1996 denied the appeal, stating:

Due to the fact that this property does not meet the agriculture classification, the timber land classification, or the non-qualified agriculture land classification.

7. On August 5, 1996, the taxpayer appealed that decision to this Board, stating:

Property does meet timberland classification.
Use has not changed.

8. In 1996, the DOR converted the subject property from class ten, forest land, to class four, a residential subdivision.

9. The "Amended Declaration Of Protective Restrictions And Covenants For Mariners Haven" were filed with the Lincoln County Clerk and Recorder on September 3, 1996. The document was filed after the county board hearing.

TAXPAYER'S CONTENTIONS

Mr. Douglas testified "the actual use of the great portion of the Mariners Haven property has continued as a tree

farm operation."

Mr. Douglas told the Board that to date seven residential lots within the subject subdivision have been sold. The expected sellout period for the remainder of the lots is anticipated to be sixty years; therefore, the current primary use of the subject property is timberland not a subdivision.

Mr. Runyon testified that select cutting is taking place throughout Mariners Haven. The select cutting consists of removal of bug infested trees, dead fall, and thinning of trees from over-growth. He testified that Mariners Haven began logging the subject property in 1994. This logging operation takes place in the spring and fall. Timber is either sold to a local saw mill, Owens & Hurst Lumber Company, or sold for firewood.(exhibit #1, pages 1,2,3 & 7). He stated that pages 4, 5 & 6 of exhibit #1 are either correspondence or forms filed with the State regarding the logging operation and slash burning permits.

Mr. Hudson testified that the prior owner extensively logged the subject property.

Mr. Runyon testified that the store and campground are located at the main entrance to the subdivision. The campground consists of 25 full service spaces and 4 spaces with water and electrical service. He stated that the roads in the subdivision are, for the most part, dirt roads. The semi-improved roads are gravel which are the roads in front of the campground area and the road to the marina.

Mr. Luciano testified that the utilities for the subdivision, i.e. sewer and water, have been approved by the State of Montana. The sewer system is a gravity system and water is supplied by a well. The water and sewer lines are located in the roads and are not in place for all of phases II and III. Each phase has its own drain field. (Refer to exhibit #2)

Mr. Luciano stated, "We've continued the timber land plan that's been in place and we will do so until lots are sold, and as they are sold and the use changes they will come out of the timber land. In the meantime, we are conducting on all of it the same as it's been done in the past." He testified that lot sales are handled through a separate entity, The Land Store.

Taxpayer exhibit #3 is titled "Tree Farm Management Plan" and is dated July 15, 1996. Mr. Luciano testified that the practices stated on this exhibit are the same as that which have been conducted in prior years.

Mr. Luciano stated that the objective of the campground/RV park is to promote the subdivision. He indicated the partnership had anticipated that a large majority of the subdivision lots would be sold to date. He stated that the market has changed in the Eureka area, and this is the reason only seven lots have sold to date.

Taxpayers exhibit #4, "Amended Declaration of Protective Restrictions and Covenants for Mariners Haven," is dated August 10, 1996 and was filed with the Lincoln County Clerk

and Recorder on September 3, 1996. Mr. Luciano testified that these are the only covenants which have been filed with the Clerk and Recorder. Mr. Luciano also stated that there were previous covenants drafted but were never filed. One paragraph of the filed covenant states:

32. Timberland. The 108 acres that Mariners Haven is located on has been used as a tree plantation and for livestock grazing in the past. Declarant reserves the right to continue these uses in all common areas and unimproved lots under a Forest Management Program. The Forest Management Program will remain in effect in all common areas, and will end on all lots when they become fully improved and are sold to others. When title has passed from the Declarant to the purchaser, the new owner will adhere to the recorded covenants.

Mr. Luciano testified that the lots where the store and campground are located should be excluded from the requested timber land classification. The use on these particular lots, unlike the residential lots, has changed.

Mr. Luciano testified Mariners Haven Subdivision was approved by the State of Montana in 1990 or 1991. The infrastructure, i.e. sewer and water systems, were installed in 1995. In 1996 the change in value took place.

Mr. Hudson testified that in prior years the subject property was enrolled as a tree farm. Through inspection of records on file, it came to his attention that the property was in need of recertification as a tree farm. Mr. Hudson assisted

the taxpayer in the preparation and development of exhibit #3, "Tree Farm Management Plan". In summary, this exhibit illustrates the following:

LANDOWNERS OBJECTIVES:

Property is being developed as a leisuretime/recreationsubdivision for fishing & boating on Lake Koocanusa. The objectives for the parks, open space, and common areas, as well as any unsold areas, will be to develop an open stand of large trees.

RECOMMENDED ACTIVITIES:

Harvesting: Make commercial thinnings, leaving the biggest, most health (sic) trees, that will grow fast and become the large trees desired. Salvage and dead or dying trees.

Timber Stand Improvement: Thin any clumps of non-merchantable trees, leaving the biggest & best. Prune lower limbs to reduce fire hazard. Cut trees can be sold for firewood.

Reforestation: none needed.

Range Management: none.

DEPARTMENT OF REVENUE'S CONTENTIONS

The DOR, through the testimony of Mr. Haynes and Mr. Pierson, stated that the subject property was reclassified from class ten, timber land, to class four, a residential subdivision, based on the Montana Code Annotated and the Administrative Rules:

15-44-102. MCA. (5) "Forest Land" means contiguous land of 15 acres or more in one ownership that is capable of producing timber that can be harvested in commercial quantity and is producing timber unless the trees have been removed by man through harvest, including clearcuts, or by natural disaster, including but not limited to fire. forest land includes land:

(a) that has not been converted to another use; or

15-44-103. MCA. Legislative intent - value of forest lands - valuation zones. (1) In order to encourage landowners of private forest lands to retain and improve their holdings of forest lands, to promote better forest practices, and encourage the investment of capital in reforestation, forest lands must be classified and assessed under the provisions on this section.

42.20.160 ARM. Forest Land Assessment (1) Effective January 1, 1994, the department of revenue shall assess land as forest lands according to the following basic determinations.

(a) Forest lands are:

(iv) land which is not classified or used for agricultural, industrial, commercial or residential purposes.

Mr. Pearson testified that the installation of the infrastructure, i.e. sewer and water, has changed the intended use of the subject property, therefore, changing the classification from class ten property to class four property.

Mr. Haynes testified that Phase I of Mariners Haven has not been filed with the Clerk and Records office. Once this portion of the subdivision is filed with the Clerk and Records office it will be changed from class ten to class four property.

Mr. Haynes testified that the DOR reduced by 50% the market value on the lots which are not serviced by sewer and water. DOR's exhibit F is the AB-26 Property Review Form, AB-3T application for forest classification and a response from Mr. Haynes explaining his reasoning, stating:

On June 18th Randy Pierson, state forester and Steven Scott. Ag/Timber appraiser reviewed your property at Rexford. Your timber application was denied because of the following: the improved lots are residential not timber land, the common area is residential because it is used by all the owners and has limited timber growing because of steep and rocky ground. The undeveloped lots are not large enough to meet forest requirements because they must have 15 acres of commercial timber. Since the timber form was denied I have approved your AB-26 and reduced the lots you can not sell. I lowered them by 50% and when they are developed or sold they will go back to full value. You will receive assessment sheets showing the values being lowered. If you have any questions please call our office or contact Randy Pierson at his Helena Office.

Mr. Haynes testified that the drainfields are located in the common areas.

DISCUSSION

The issue before this Board is to determine if the subject property is to be classified as class 10 property, timber land, or class four property, a residential subdivision.

Taxpayers exhibit #3, the "Tree Farm Management Plan" is a management plan and stewardship program for the subject land. Any owner of property with timber, no matter the size of the parcel, may have a management plan; however, the mere existence of a management plan does not dictate or automatically qualify a parcel for class ten, timber land classification.

The DOR denied forest land classification for the subject property due to the fact the individual subject lots are

not large enough to meet the forest land requirement.

ARM 42.20.160 (1) (I) contiguous land of 15 acres or more in the same ownership that is capable of producing timber that can be harvested in commercial quantity. (Emphasis supplied).

ARM 42.20.161 (1) (c) defines contiguous land as:

...land that touches or shares a common boundary or that would have shared or touched a common boundary had the lands not been separated by rivers and streams, county boundaries, local taxing jurisdiction boundaries, roads, highways, power lines and railroads. (Emphasis supplied).

A key component in the appraisal process is the highest and best use analysis. Highest and best use as defined in The Appraisal of Real Estate, Eleventh Edition,:

the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value.

DOR's exhibit E, subdivision plat map for the subject property Phases II & III states:

Note: LOTS 18 AND 19 AS SHOWN HEREON ARE NOT SERVED BY UTILITIES, WATER AND SEWER FACILITIES, AND UNTIL SUCH UTILITIES ARE EXTENDED TO SERVE SAID LOTS AND AN AMENDED PLAT HAS BEEN FILED, THEY MAY NOT BE SOLD OR TRANSFERRED.

Note: LOTS 19 thru 37 and LOTS 74 thru 90 AS SHOWN HEREON ARE NOT SERVED BY UTILITIES, WATER AND SEWER FACILITIES, AND UNTIL SUCH UTILITIES ARE EXTENDED TO SERVE SAID LOTS AND AN AMENDED PLAT HAS BEEN FILED, THEY MAY NOT BE SOLD OR TRANSFERRED.

State's exhibit E, referring to the undeveloped lots, clearly states "they may not be sold or transferred" until the utilities are extended to the lots. This restriction must be considered as an encumbrance upon the undeveloped lots. Even though they are individually surveyed lots, they cannot be sold until utility services are extended. Until that time, the ownership and use is not changed and the contiguity is not broken. Presently, residential development on these lots is not a legally permissible use; therefore, the highest and best use of these lots cannot be considered residential. There is nothing in the statute or administrative rules to indicate that a filed and platted subdivision be excluded from the benefit of forest land classification.

It is opinion of the Board that ownership, size and contiguity requirements as defined in MCA 15-44-102 and ARM 42.20.160 and 42.20.161 have been met for Phase II, common area lots G, H, & I along with the lots 18 and 19 and Phase III, common area lots A-G along with lots 19-37 and 74-90. Further, the Board's opinion is that the use for these particular lots has not changed by simply platting the subdivision and placing lines on a map.

Finally, the Board's opinion is that the highest and best use for those lots serviced by utilities has changed and is residential. This change is evidenced by the sales which have

taken place. As previously stated, the market value only becomes an issue if the property classification changes.

Neither party submitted oral or documented evidence to the location, number and size of the drainfields. The only testimony with respect to the drainfields is that they are located in the common areas. These drainfields are a function of the subdivision, therefore, must be valued accordingly. It's the Boards opinion that one acre shall be designated for each drainfield, with a value of \$1,000 per acre.

CONCLUSIONS OF LAW

1. A portion of the subject property qualifies for forest land classification under the "Forest Lands Tax Act" Section 15-44-101 through 15-44-105, MCA and "Forest Land Assessment" 42.20.160 through 42.20.170 ARM.

2. The appeal of Mariners Haven Partnership is hereby granted in part and denied in part and the decision of the Lincoln County Tax Appeal Board is hereby modified.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Lincoln County by the Assessor of said County at the 1996 tax year value of reflective of forest land classification for common area lots G, H, & I and lots 18 and 19, Mariners Haven Subdivision, Phase II and common area lots A through G, lots 19-37 and 74-90, Mariners Haven Subdivision, Phase III, with the exception of the common areas which contain a drainfield. Each drainfield shall consist of one acre and be valued at \$1,000 per acre. The balance of the lots and roads in the ownership of Mariners Haven Partnership are to be valued as residential class four property as determined by the Department of Revenue.

Dated this 14th of August, 1997.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of August, 1997, the foregoing NUNC PRO TUNC Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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c/o Alfred Luciano
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